IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.88/99

Smt. Nirmla Johari **Versus** State & Ors.

DATE OF ORDER :: 03/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

None present for petitioner
Mr. A.K. Gupta, for respondent-JDA

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By the instant petition, petitioner has challenged the criminal proceedings initiated against her in Criminal Case No.21/90, JDA Vs. Smt. Nirmla Johari.

Petitioner is an allottee of Plot No.133, Rathore Farm, Amra Pali Marg, Jaipur and notice was issued by respondent-JDA u/s.31(1) of JDA Act, 1982 dated 5th June, 1989 for the reason that she had made unauthorized construction over the plot in question, but from the record of the case, it appears that under the orders of learned trial Judge, the factual verification was made at site and report was submitted on 10th July, 1995 from which it appears that on Plot No.133, only boundary wall has been constructed and no other construction was raised over the said plot by present petitioner. It appears that while passing order impugned dated 2nd December, 1998, a site inspection report prepared under his orders dated 10th July, 1995 has not been looked into by learned trial Judge.

In view of report which is relevant in the present case, there was no justification available to continue the criminal proceedings so far as the present petitioner is concerned, particularly, when no construction has been raised by her over the plot in question. As such the very notice issued to her of raising illegal construction by JDA in exercise of power u/s.31 (1) of the Act, 1982 is not legally sustainable.

Accordingly, the misc. petition stands allowed and the criminal proceedings initiated against petitioner in Criminal Case No.21/90 deserve to be set aside. Record be sent back to trial court.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.